

November 5, 2014

By ECF

Honorable Naomi Reice Buchwald
United States District Judge
United States Courthouse
500 Pearl St.
New York, NY 10007-1321

Re: U.S. Bank National Association v. Commonwealth Land Title Ins. Co., Civ. No. 13 CIV 7626

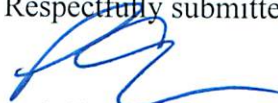
Dear Judge Buchwald:

Various third-party defendants have expressed their intent to seek dismissal of Commonwealth's third-party claims against them. The law firm of Lowenthal & Kaufman and Martin Kaufman individually have requested a pre-motion conference, seeking permission to file a motion to dismiss. Abe Klein has filed and served a *pro se* motion to dismiss. In response to Abe Klein's motion to dismiss (Doc. 70), Commonwealth filed a letter brief in which it opposes Abe Klein's motion to dismiss based on the pleadings, and alternatively asks that it be treated as a motion for summary judgment (Doc. 76). Commonwealth has filed a Memorandum of Law in Support of Summary Judgment (Doc. 78) and a Statement of Undisputed Material Facts pursuant to Local Rule 56.01 (Doc. 79).

U.S. Bank disputes many of the factual allegations in Commonwealth's Statement of Undisputed Material Fact. But, since it is not clear that the Court intends to treat Mr. Klein's motion as one for summary judgment, it would be premature for U.S. Bank to submit materials in opposition. Therefore, I write to ask that, if the Court is inclined to treat any of the pending motions or letters requesting pre-motion conferences as motions for summary judgment, the Court afford all parties a full opportunity to be heard by imposing a briefing schedule and affording all parties the opportunity to submit materials concerning the motion. See Fed. R. Civ. Proc. 12(d) ("all parties must be given a reasonable opportunity to present all the material that is pertinent to the motion").

U.S. Bank recognizes that Mr. Klein's recent filing of an Amended Answer to Commonwealth's Third Party Complaint likely renders Commonwealth's request for summary judgment moot. Nonetheless, U.S. Bank simply asks that, if this Court decides to entertain the motions as motions for summary judgment, the U.S. Bank be afforded a full and fair opportunity to be heard.

Respectfully submitted,



Rob Shainess
Attorney at Law
rob@capstonelaw.com

cc: David Fiveson, Esq. (By ECF)
Jeffrey J. Cunningham (By U.S. Mail)
Norman Tepfer (By U.S. Mail)
Abe Klein (By U.S. Mail)
Evangelos Michailidis, Esq. (By Email)
William Yunker (by Email)